

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

ROSALIND HOLMES,
Plaintiff,

Case No. 1:20-cv-825
McFarland, J.
Litkovitz, M.J.

vs.

GEORGIA PACIFIC,
Defendant.

**REPORT AND
RECOMMENDATION**

This matter is before the Court on plaintiff Rosalind Holmes’s “Amended Motion For 41(A) Voluntary Dismissal.” (Doc. 39). The Court recently recommended denial of plaintiff’s initial such motion (Doc. 32) for the reasons set forth in its prior Report and Recommendation. (See Doc. 38). Plaintiff now “request[s] that this Court voluntarily dismiss her amended complaint (Docs. 20 & 28) filed against Georgia Pacific . . . without prejudice.” (Doc. 39 at PAGEID 1607).¹

Federal Rule of Civil Procedure 41(a)(1)(A) provides that a “plaintiff may dismiss an action without a court order by filing: (i) a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment. . . .” Fed. R. Civ. P. 41(a)(1)(A)(i). Georgia Pacific has not answered the most recently amended complaint (Doc. 28) or moved for summary judgment, and the Court therefore construes plaintiff’s amended motion (Doc. 39) as the notice of dismissal contemplated by Rule 41. See *Potts v. Klein*, No. 4:07-cv-697, 2007 WL 4248190, *3 (N.D. Ohio Nov. 30, 2007) (construing pro se plaintiff’s Rule 41 motion as a notice of dismissal where the other requirements of Rule 41(a)(1) were satisfied).

¹ Plaintiff’s amended motion also references dismissal of “Count I – VI of her amended complaint[,]” which is all of the claims asserted in that complaint. (*Id.* at PAGEID 1606; see Doc. 28).

It is therefore **RECOMMENDED** that plaintiff's motion (Doc. 39) be construed as a notice of dismissal under Rule 41 and her amended complaint (Doc. 28) be **DISMISSED** without prejudice.

Date: 6/9/2021


Karen L. Litkovitz
United States Magistrate Judge

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NOTICE

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to this Report & Recommendation within FOURTEEN (14) DAYS after being served with a copy thereof. This period may be extended further by the Court on timely motion by either side for an extension of time. Such objections shall specify the portions of the Report objected to and shall be accompanied by a memorandum of law in support of the objections. If the Report and Recommendation is based in whole or in part upon matters occurring on the record at an oral hearing, the objecting party shall promptly arrange for the transcription of the record, or such portions of it as all parties may agree upon, or the Magistrate Judge deems sufficient, unless the assigned District Judge otherwise directs. A party may respond to another party's objections WITHIN 14 DAYS after being served with a copy thereof. Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).